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 BERLIN BOYD
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 MARGARET PRITCHARD
 JAMES TOLES

MEMPHIS AND SHELBY COUNTY LAND USE CONTROL BOARD

EST. 1922 AS MEMPHIS PLANNING COMMISSION - REORGANIZED IN 1976

JOSH WHITEHEAD, AICP, SECRETARY

CITY HALL - 125 N. MAIN ST., STE. 468 - MEMPHIS, TENNESSEE 38103 - (901) 576-6610



COUNTY APPOINTEES
 JON MCCREERY, CHAIR
 ROBERT NORCROSS
 EMILY TRENHOLM
 LISA WILBANKS
 ROSLYN WILLIS

MINUTES March 8, 2012

Chairman's Opening Remarks

Chairman Toles made two announcements before the meeting started. First he welcomed new Board Member Berlin Boyd. He then announced the new Chairman of the LUCB would be Jon McCreery and the new Vice Chair would be Mary Sharp. He thanked the Board of allowing him to serve for the past five (5) years and turned the gavel over to the new Chair, Jon McCreery. Chairman McCreery presented James Toles with a plaque for this service from the LUCB Members and Staff.

Meeting Attendance

LUCB Board Members

| OFFICERS/MEMBERS | NAME | PRESENT | ABSENT |
|------------------|--------------------|---------|--------|
| Chairman | Jon McCreery | X | |
| Vice Chairman | Mary Sharp | X | |
| Member | Berlin Boyd | X | |
| Member | Rusty Linkous | | X |
| Member | Margaret Pritchard | X | |
| Member | Robert Norcross | X | |
| Member | James Toles | X | |
| Member | Emily Trenholm | X | |
| Member | Lisa Wilbanks | X | |
| Member | Rosalyn Willis | | X |
| Alternate Member | Frank Colvett, Jr. | X | |

Call to Order and Roll Call

Chairman Jon McCreery called the meeting to order at 10:00 a.m. Brian Bacchus called the roll. There was a quorum.

LUCB Staff: Josh Whitehead, Secretary of Land Use Control Board, Brian Bacchus, Don Jones, Gregory Love and Chip Saliba.

Others Present: April Bostick, Homer Branan, Roscoe Dixon, Lynn B. Doyle, Mike Fahy, Floyd Franklin, James Henderson, Anthony Hicks, Sean Hunt, Lisa Maclin-Love, Harvey Marcom, Michael Potts, Jimmie Sanders, Dr. Susan Shelnut, David Snipes, Brenda Solomito, John Stevenson, Van Turner and Bobby Walker.

Chairman's Opening Remarks

Chairman Toles read the General Order of the Public Hearing proceedings and the Conflict of Interest Statement.

Secretary's Report

Josh Whitehead reported that the 30-day hold to the amendments of the Unified Development Code has not been finalized. He requested to remove the Agenda Item for an additional 30-day hold until terms could be worked out with other concern parties. He added that he felt next LUCB meeting (April 12th) would be sufficient time to deliberate and work out the terms.

Approval of Minutes: February 9, 2012

Board Member Wilbanks made a motion to approve the minutes with the noted corrections. Board Member Pritchard seconded the motion. The motion passed unanimously.

General Order of Public Hearing

Chairman McCreery explained the procedure for hearing the applications; staff presentation for the application; applicant comments; comments from the public; time limits; rebuttal; and the LUCB's discussion and action. The Consent Agenda Items 1 and 2 were read. Chairman McCreery also explained the procedure for hearing the Consent Agenda Items. He then introduced Board Member Margaret Pritchard to be the Zoning and Subdivision Chair and to read the Consent Agenda Items.

Consent Agenda (Items 1 and 2)

1. CASE NUMBER: PD 86-359

DEVELOPMENT NAME: HUMPHREYS CENTER PLANNED DEVELOPMENT, PHASE II

Request: Erect a temporary banner sign for one year on the northwest side of the Baptist Hospital Corporate Building located at 350 North Humphreys Boulevard to acknowledge the 100th Anniversary of Baptist Memorial Health Care.

Staff's Recommendation: Approval

2. CASE NUMBER: PD 08-326

DEVELOPMENT NAME: THE GALLERIA OF MEMPHIS PLANNED DEVELOPMENT, PHASE 16

Request: (1) Approval of exterior signage for proposed Cheddar's Restaurant;
(2) Permit parking lot pole lights to be 30 feet in height where 20 feet is currently required.

Staff's Recommendation: Approval

Discussion Summary – Norman Saliba approached and stated **Case Number S12-002** had been pulled from the agenda. He explained that notices were sent out but to the wrong part of town from the case and there were no Cancellation Notices sent to make the property owners aware. He then suggested if anyone was present for that case, they could be dismissed.

No cases were pulled from the Consent Agenda. Board Member Pritchard made a motion to approve Consent Agenda Items 1 and 2. The motion was seconded by Board Member Boyd. The motion passed unanimously.

REGULAR AGENDA ITEMS 3-7

Item 3: CASE #: P.D. 11-322

MTL PLANNED DEVELOPMENT

Request for a wood chipping and processing operation.

Staff's Recommendation: Approval with conditions

Chairman McCreery asked if the applicant was present, in agreement with staff's recommendation and if there were anyone from the general public in opposition of the case. There were members from the general public in opposition.

Chairman McCreery asked if the staff would present the case for review.

Donald Jones gave a brief summary of the staff report which included the location (North side of Knight Rd.; +/-841.04 ft. west of Getwell Rd.) and size (54 acres) of the property. Donald brought the LUCB as well as those in public attendance up to date on the process that has taken place regarding the review and recommendation of the case. He showed aerial pictures of the property, the boundaries and an aerial map which showed a heavily wooded site. He pointed out the current use/occupancy of various sites near the case property. He explained the intentions of the applicant for the use of the property site (wood chipping or converting to mulch). He also pointed out various areas located on the site plan of the property and its uses (office/storage area(s)/chipping area/mulch area). Donald noted that site property was located within an employment zoning area. He added that after he reviewed the employment zoning codes, it was determined that the mulch operation was a permitted use on the site. He noted that the chipping operation was the issue which makes the site a production facility which the Heavy Industrial District regulate and the reason the application is being filed as a planned development to allow for the additional use. He stated some area noise level readings were conducted for the level of noise the wood chipper would add and it was determined it was equivalent to regular street noise which met the concerns of staff. It that being done, staff revised their recommendation to approve the application with amendments to the conditions which are as follows:

1. B. – no construction or demolition of materials will be added to the site;
2. C. – adhere to recommendation from MFD of the height, length, & width of the mulch plies and install an entrance gate that would be approved by MFD in case of fire;
2. E. – set hours of operation for the business would be 7:30 a.m. until 6:00 p.m. (Mon. thru Sat.) and closed on Sundays;
4. L. – applicant would work with the Health Dept. to maintain the rodent control on site.

Chairman McCreery asked if the applicant would come forward and state their name and address for the record. Homer Branan, representative for the applicant, approached and stated his name and mentioned Michael Potts, Sean Hunt, Chris Long and Dr. Susan Shelnut who were all present and prepared to speak in favor of the application if needed. Mr. Branan gave a brief recap of the presentation stating some distances of the site property were from each location he mentioned. He stated that the site was also zoned Industrial which needed only a 15ft. buffer and the proposed operation would be in compliance. He stressed that all requirements had been met from LUCB staff and Memphis Fire Dept. (MFD).

Sean Hunt, VP/CFO of Michael's Trees and Loader Service approached and stated his name. He spoke regarding the Child Impact Study offered by UOfM Professor Mike Schmidt. Sean stated the concerns and claims made by the schools of population loss, vector control and mulch use. He denied that the clearing they had done forced any rodents, pests, snakes onto the surrounding properties and to assure control, he added they had included restrictions in the PD. He noted that out of all the schools (99) they visited, 59 schools use mulch and 3 had mulch on their playgrounds. He did not see why the schools in the area were complaining if it's a part of the norm for their use.

Chairman McCreery asked to hear from those in opposition of the case.

Lisa Maclin-Love, Principal of American Way Middle School approached and stated her name and address as 3805 American Way, 38118. Mrs. Love questioned the knowledge of OPD staff of knowing what they were doing. She referred to the findings of the 1st Staff Report that recommended rejection due to the fundamental incompatibility of the proposed land use with the existence of sensitive fragile populations as schools, residences, senior homes and churches. Then she referred to the new findings of a 2nd Staff Report which stated that wood chipping and process operation should be a part of every neighborhood and go hand in hand with schools and residences as long as the noise level is reduced. She argued that between the two staff reports, the stated populations, yet remain sensitive fragile. She requested an outside entity, not hired by the applicant or under the control of the applicant, to perform an independent study with definitive assurances of no potential public health risks of the proposed operation. She added that until that is done; she cannot risk the potential health risks of the students.

Anthony Hicks, Director of Public Relations at Shelby Residential Vocational Services (SRVS) approached and stated his name and address as 3971 Knight Arnold Rd., 38118. Mr. Hicks stated that SRVS has two (2) facilities in operation in close proximity of the proposed site. He mentioned their clientele of 850 which consists of persons who are intellectually and developmentally disabled suffering with Cerebral Palsy, Autism and Retardation and 900 employees with whom they are concerned. He felt there were not enough conclusive findings of the impact the proposed operation would have on their clients and employees, especially being exposed to elements during outside activities. He added that environmental and transportation issues needed to be addressed before he could support the applicant's application.

Lynn Bennett Doyle, Executive Director of Delta Medical Center approached and stated her name and address as 3000 Getwell Rd., 38117. Mrs. Doyle recapped a letter written by the CEO of Delta

Medical Center, Mrs. Mary Hamer in her absence. In the letter, Mrs. Hamer expressed concern about the health effects of the mulch operation would have on the children, patients and businesses. She stated that Delta Medical has about 25K patients per year with 10% who has respiratory issues. Mrs. Hamer also stated that the mulch operation would mobilized the community's momentum of being a growing and thriving neighborhood.

Bobby Walker, Principal of Getwell Elementary approached and stated his name. He agreed with the comments from Mrs. Maclin-Love regarding the need of an outside entity, not hired by the applicant or under the control to the applicant, to perform an independent study with definitive assurances of no potential public health risks of the proposed operation.

James Henderson, Pastor of Abundant Life Fellowship Church approached, stated his name and address and as 3747 Knight Arnold Rd. which is located directly across from the propose mulch operation site. He stated that his major concern was the uncertainty of the potential harm the proposed business would have on the children and pregnant mothers in the area.

Roscoe Dixon suggested a 90-day hold to allow time to review the reports and studies that had been done.

Homer Branan, representative for the applicant introduced Dr. Susan Shelnut. Dr. Shelnut approached, stated her name and a brief background of her professional and educational history. She stated her contract denoted for her to offer her own opinion regardless of who compensates her for that opinion. She continued saying that she reviewed the operation to take place on proposed site as well as scientific literature regarding similar operations and the Child Impact Statement. She stated her findings were no impact to children at the site. She added that the issues discussed earlier were not going to be implemented or performed on the site.

Chairman McCreery asked the LUCB for a motion to begin board discussion.

Board member Pritchard made a motion to approve case **P.D. 11-322** in accordance with staff's recommendation and the requested friendly amendments. The motion was seconded by Board Member Norcross.

Board Member Colvett stated that his concerns and fears were erased with having reputable firms to conduct various studies and a PhD Professor present giving expert opinion that the operation would not cause any harm to children or residents. Also, he added the willingness of the applicant to have a 100ft. buffer is a positive.

Board Member Toles asked if he could hear the comments from Mr. Potts.

Michael Potts, owner of Michael's Trees and Loader Service approached and stated his name. He reiterated they had done everything possible to be in compliance and compromise with the neighbors and neighborhood association to be good neighbors. He added that they had self-imposed a 100ft. barrier around the entire property, 255ft. barrier on the North side of property located between the site property and the schools, 15ft. pile height, and agreed to the request of the neighborhood

association not to bring manure onto the site.

Board Member Toles asked the opposition how a 90-day hold would benefit them or their issues of concern.

Roscoe Dixon approached again and stated his name and address as 4041 Knight Arnold Rd., 38118. He stated that his impression from the last meeting was that LUCB was sending the case to City Council with a letter of rejection. He stated also that even though there had been studies and reports and expert witnesses, there should as well be a timeframe allotted to validate their findings, especially since those individuals were hired by the applicant. He added that since the site property is located within a sensitive fragile population of schools, daycare centers, adult challenged facilities, there should be time allotted to validate if the proposed operation is environmentally safe. Mr. Dixon also added that the Health Dept. should be involved with a study or report of safety issues and that the MCS Board is very perturbed about this application.

Board Member Toles asked staff how many times the case had been put on hold.

Staff member Don Jones replied that the LUCB placed the case on hold February. He noted that the original application was supposed to be heard in January but the applicant withdrew his application/case in order to meet with the residents and neighborhood association and address their issues and concerns.

Josh Whitehead stated that the UDC stated that actions must be taken on an application 75 days after being submitted by the applicant.

Chairman McCreery noted to Mr. Dixon that it seems like they have to vote on the application and that UDC does not permit the LUCB to hold the case any longer. Chairman McCreery also allowed for someone else from the general public to approach and speak.

Floyd Franklin approached and stated his name and that he was from the Bethel Grove community which is west of the property site. He asked what period of time it would take for the residue from the chipping and mulch to dissolve into the ground and end up in the neighborhood sewer system.

Chairman McCreery then asked for a vote from the LUCB. The motion passed with an 8-1 vote. Chairman McCreery and Board members Boyd, Colvett, Norcross, Pritchard Toles Trenholm and Wilbanks voted Aye and Vice Chairman Sharp voted Nay. The application was approved.

Item 4: CASE #: Z 11-113 CC

Southeast corner of Shelby Drive and Germantown Road

Request to amend the conditions of the C-P Plan to permit a convenience store and gasoline sales.

Staff's Recommendation: Rejection

Chairman McCreery asked if the applicant was present, in agreement with staff's recommendation and if there were anyone from the general public in opposition of the case. There were members from the general public in opposition. Chairman McCreery asked staff to present a Staff Report on

the case.

Mike Fahy, a representative for the applicant approached and requested a 60-day hold on the application due to the setback of the applicant had to replace the architectural firm who could develop comprehensive site plans of their proposed project and to meet with opposition. He added a firm was hired only a few days prior to the meeting and that was not enough time to present a set of decent plans for review. Mr. Fahy added a condition to the hold, stating that if a compromise is not reached, they would withdraw the application.

Chairman McCreery asked if the opposition agreed with the 60-day hold.

Van Turner, member of the Pinnacle Point Subdivision approached and stated his name and address as 4860 Lanlee Dr., 38125. He stated that if the applicant yet proposes a gas station and convenience store that a 60-day hold would not make a difference to the residents in the area opposing the application or anything that abuts their residential area. The added that there were already nine (9) gas stations in the area.

Chairman McCreery again asked staff to present a Staff Report on the case.

Donald Jones gave a brief summary of the staff report which included the location (SE corner of Shelby Dr. and Germantown Rd.) and the request to amend Case Z 04-118 CC (2004), to add a gas station and convenience store onto the property as a permitted use. He showed aerial pictures, the boundaries, aerial and zoning maps of the property site which included other public and private owned properties. He pointed out two other gas stations and convenience stores currently operating located 1/2 mile from the case property. He explained there were two (2) zoning conditions requested and approved for use on the commercial property which were an Office or Day Care. Donald noted that the character of the area which was primarily institutional and residential did not, even since 2004, warrant commercial intensity. He added that there had been letters of opposition submitted and staff recommended rejection.

Chairman McCreery asked if the applicant would come forward and state their name and address for the record.

Mike Fahy approached again and gave reasons behind his request for the hold. He felt they needed time to meet with the opposition and to obtain a very detailed site plan of the property outlining elevations, buffer, landscaping, location of store and pumps for the residents and LUCB to review. He stated that applicant has no intentions of alcohol/beer or tobacco sales on the premises, only to operate a neighborhood store. He did apologize for the applicant and himself for not being as prepared as expected.

Chairman McCreery asked to here from those in opposition of the case.

Van Turner approached with Sharon McClury and other residents from Pinnacle Pointe and Harvest Knoll subdivisions. He stated that the Office or Day Care use would be more of a positive impact on the neighborhood than what's proposed. He noted locations of several gas station/convenience stores

in close proximity of the case property and within their neighborhood. He mentioned one gas station/convenience store that had been converted into a Check Cashing operation which supports their opposition of not wanting other establishments converted into negative operations that would compel negative customers/clientele in the area where their child(ren) live, play and study. He added that they want to preserve the residential character of the neighborhood.

April Bostick approached and stated her name and address as 7290 Rourke Circle, 38125. She stated that the location of the proposed gas station/convenience store abuts a neighbor's backyard. She added that the operation would decrease their property value and increase the blight, crime, stress, congestion and traffic in the neighborhood. She noted that there were 3 same businesses located within walking distance in their neighborhood. She then proposed to the applicant/owner if he would like to sell the property, to allow the residents to opportunity to purchase and develop the land in a positive way to benefit the neighborhood.

Jimmie Sanders approached and stated his name and address as 7445 Red River Dr., 38125. He wanted to the make a correction to the staff report when noted that residents from Harvest Knoll subdivision did not respond, he presented an email that he had sent in opposition. He also added that there were other established businesses in the area that is provided the services the applicant proposes and there was not a need for another.

David Snipes approached and stated his name and address as 4746 Migaldi Dr., 38125. His comments were in conjunction with the others and he did not see the need for the business and would like to see what the residents as a whole could do to develop the land.

Chairman McCreery then asked for a motion.

Board member Pritchard made a motion to approve case Z 11-113 CC in accordance with staff's recommendation for rejection. The motion was seconded by Board Member Norcross. The motion passed unanimously. The application was denied.

Item 5: CASE #: SUP 12-201 1100 Cherry Rd. - East side of Cherry Rd. opposite of Haverhill Rd.

Request for A special use permit to allow a preschool
Staff's Recommendation: Approval with conditions

Chairman McCreery asked if the applicant was present, in agreement with staff's recommendation and if there were anyone from the general public in opposition of the case. The applicant was in opposition with Condition III. Chairman McCreery asked staff and applicant if there were a condition that could be resolved in lieu of hearing a Staff Report on the case.

Harvey Marcom, a representative of the applicant approached and stated that after Harding had received a re-zoning letter from City Engineer of being out of compliance with the operation of their preschool and/or early childhood operation, they agreed to replace the sidewalk but not pull it all out. He added that Harding is undergoing a Master Plan for the location and just wanted to do some work done to the sidewalk. He stated that the applicant wanted time to meet with City Engineering to

compromise on a plan during the interim of their Master Plan in order to meet the requirements from Code Enforcement.

Chairman McCreery asked John Stevenson from City Engineering if there was a timeline to meet and repair the sidewalks to be in compliance. Mr. Stevenson replied that the applicant were given a 90-day period to meet Codes requirements and to have the sidewalks in serviceable condition.

Chairman McCreery then asked for a motion to amend the condition.

Board member Pritchard made a motion to offer a Friendly Amendment to Condition III., case SUP 12-201 that stated: "All sidewalks must meet the approval of City Engineering by being repaired or replaced in a timely fashion within 90-days. The motion was seconded by Board Member Colvett. The motion passed unanimously.

Chairman McCreery then asked for a motion on the staff's recommendation with the amendment.

Board member Pritchard made a motion to approve case SUP 12-201 as amended. The motion was seconded by Board Member Wilbanks. The motion passed unanimously.

Item 6: CASE #: SUP 12-202 8350 Macon Rd. - Northeast corner of Macon Rd. & Cully Road

Request for a special use permit to allow a preschool
Staff's Recommendation: Approval with conditions

Chairman McCreery asked if the applicant was present, in agreement with staff's recommendation and if there were anyone from the general public in opposition of the case.

Harvey Marcom with The Reaves Firm approached and stated his name and address as 5880 Ridge Bend Rd. He stated that he did have some opposition to the case's condition imposed by City Engineering.

Chairman McCreery asked the applicant and Mr. Stevenson from City Engineering if there were a condition that could be resolved in lieu of hearing a Staff Report on the case.

John Stevenson from City Engineer approached and stated there conditions which were:

1. Property to be dedicated 34ft. from center of Macon Rd.
2. Improvements made to Macon Rd. and expand it
3. Bridge the gap by adding sidewalks on the North side of Macon

Harvey Marcom approached and he reported that the dedication had been done by Harding with the expectations of sidewalk improvements. He also stated that there were accessible sidewalks on the South side of Macon Rd. for the students and parents that lead directly to the building. He made mention per the staff at Harding, they were not aware of any of their clients who walk their children (ages 1 1/2 to 5 yrs. old) to the Academy. So, in that regard, Mr. Marcom requested that sidewalks not be a condition at all. He then brought up the dedication of 108ft. ROW on Cordova Rd. that City

Engineering conditioned for approval. Mr. Marcom explained that the Harding currently use the property for playing field. He added, years ago, it was agreed for Harding did not to have that ROW. He requested that the 108ft ROW not be a requirement since he had work diligently with staff to determine an area for the special use permit that addressed the early childhood zoning which fell outside of the ROW boundary request.

Mr. Stevenson stated he did not know why the ROW dedication was not done prior but stated two options for the LUCB and Mr. Marcom regarding the Cordova ROW that could occur. Either Harding dedicates the land to the City or the City pays for the land and split the field. The split would not impact their playing field. He added that this was standard procedure for a road route that had been established and the City Engineer's office requests full dedication.

Chairman McCreery asked if there were any LUCB comments or discussion.

Board member Trenholm stated she also was a sidewalk advocate and that the board retains the condition of public sidewalk improvements.

Board member Colvett wanted clarity on Condition #3 whether it required Harding to repair the sidewalks on Macon Rd. He added that the language in the condition does not seem to require them to do the repairs.

Mr. Stevenson was not sure and suggested to the Board to use their discretion. He added the condition would have to be deleted or tremendously changed.

Chairman McCreery summarized the content on what the Board would be voting. He noted that in the Staff Report there were no comments/conditions regarding additional dedication of parcels. He informed the Board that the only vote would be on Condition #3: the repair or replacement of the existing sidewalks North on Macon Rd. which should have been done by the City when it was first dedicated. The LUCB understood and agreed.

Board member Colvett then made a motion of a friendly amendment to request all trash pickups at the Academy be done during daylight hours. The motion was seconded by Board member Norcross. The motion passed unanimously. This request was prompted from a resident who was displeased with a 1 a.m. trash pickup.

Before the final vote to approve the application as submitted with the amendments, staff member Greg Love made the LUCB aware that Staff Reports went out a day prior to the deadline. In doing so, City Engineering did not have the opportunity to include comments or conditions to the case. He felt that Condition #3 would imply those missing comments and recommendations and/or Mr. Stevenson would address his comments and recommendations during the meeting.

Board member Trenholm wanted clarity on who was responsible for the improvements of the sidewalks on Macon Rd. Josh Whitehead stated that the LUCB could make a motion of an amendment as to who would be responsible. Board member Trenholm stated that would not answer her issue.

Board member Trenholm made a motion of a friendly amendment to request the applicant to install sidewalks on its frontage on the North side of Macon Rd. Board member Boyd seconded the motion. The motion failed with a 4 to 5 vote outcome. Board members Boyd, Sharp, Trenholm and Wilbanks voted Aye and Chairman McCreery and Board members Colvett, Norcross, Pritchard and Toles voted Nay. Harding did not have to install sidewalks on its frontage on the North side of Macon Rd.

Chairman McCreery went back to the original motion on the floor with the approved friendly amendments which he recapped: Condition #3: the repair or replacement of the existing sidewalks North on Macon Rd. per City's requirements; no sidewalk on the frontage of the North side; all trash pickups at the Academy would be done during daylight hours and there would be no dedication on property to the West. The original motion with the approved friendly amendments passed unanimously. It was also clarified that when the road west of the property gets expanded, it would be at the City's expense.

Item 7: CASE #: SE 12-01

West side of Paul Lowry Road and CN Railroad

Request for a Cold box tower, a maximum of 250' in height 100' is permitted

Staff's Recommendation: Approval

Chairman McCreery asked if the applicant was present, in agreement with staff's recommendation and if there were anyone from the general public in opposition of the case. There were none.

Brenda Solomito approached and stated that she agreed with staff's recommendation.

Chairman McCreery then asked for a motion.

Board member Pritchard made a motion to approve case SE 12-01 in accordance with staff's recommendation. The motion was seconded by Board Member Wilbanks. The motion passed unanimously.

ADJOURNMENT:

There being no further business, the meeting there upon adjourned.

MINUTES APPROVED: 4-12-12

CHAIRMAN

[Signature]
SECRETARY